

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

BORIS MIZHEN, MEDIA NETWORK,  
INC., NEW AGE OPT-IN, INC., I-  
PERMISSION, INC., DMITRI  
KOVALSKY, MUHAMMAD MOHSAN-  
UL MOULA, ESOLUTIONS  
TECHNOLOGY, INC., DECAPTCHER,  
JOHN DOES 1-20

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF**

Plaintiff Microsoft Corporation (“Microsoft”) brings this action against Boris Mizhen, Media Network, Inc. (d/b/a Media Network), New Age Opt-In, Inc., I-Permission, Inc., Dimitri Kovalsky, Muhommad Mohsan-ul Moula, eSolutions Technology, Inc. (d/b/a eSolutionsTech, AllBots, Inc. and JetBots), DeCaptcher (d/b/a DeCaptcher.com), and JOHN DOES 1-20 (collectively “Defendants”).

**I. NATURE OF ACTION**

1. This action stems from Defendants’ “spamming” of Microsoft’s Hotmail users, Defendants’ abuse of Microsoft’s Junk E-mail Reporting Program (“JMRP”) and Smart Network Data Services (“SNDS”), and Defendants’ other related unlawful activity that resulted in an  
COMPLAINT FOR DAMAGES AND  
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1 enormous quantity of spam e-mail messages being sent to legitimate Hotmail users. In doing so,  
 2 Defendants conspired and executed a scheme to create millions of unauthorized Microsoft  
 3 Hotmail e-mail accounts that Defendants then used to sanitize their spam e-mail messages in an  
 4 attempt to circumvent Microsoft's Hotmail spam filters. As a direct and proximate result of  
 5 Defendants' unlawful conduct, Microsoft has suffered damages, *inter alia*, damages to its  
 6 reputation and loss of integrity of its Hotmail services.

7 2. This action is based upon: (1) the CAN-SPAM Act (15 U.S.C. § 7701, *et seq*); (2)  
 8 the Washington State Commercial Electronic Mail Act (RCW Ch. 19.190); (3) the Digital  
 9 Millennium Copyright Act (17 U.S.C. 1201, *et seq*); (4) the Computer Fraud and Abuse Act (18  
 10 U.S.C. § 1030, *et seq*); (5) the Washington Consumer Protection Act (RCW Ch. 19.86), (6)  
 11 fraudulent misrepresentation and concealment, (7) negligent misrepresentations, (8) common law  
 12 trespass to chattels, (9) common law conversion, and (10) breach of contract. Microsoft seeks  
 13 injunctive relief, monetary damages, including punitive damages, liquidated damages, attorneys'  
 14 fees, expenses and costs, and other appropriate relief to stop and prevent Defendants from  
 15 "spamming" Microsoft Hotmail customers with unsolicited commercial e-mail messages.

## 16 **II. THE PARTIES**

17 3. Microsoft is a Washington corporation duly organized and existing under the laws  
 18 of the State of Washington, having its headquarters and principal place of business in Redmond,  
 19 Washington.

20 4. Defendant Boris Mizhen ("Mr. Mizhen") is an individual who, Microsoft is  
 21 informed and believes and thereupon alleges, currently resides in the State of Connecticut and  
 22 may be found at one or more of the following addresses: (1) 12 Fellsmere Farm Road, Branford,  
 23 Connecticut 06405, (2) 66 Glenbrook Road, Apartment T412, Stamford, Connecticut 06902, and  
 24 (3) 53 Prospect Avenue, Guilford, Connecticut 06437. Microsoft is informed and believes and  
 25 thereupon alleges that at all relevant times Mr. Mizhen was and is the President, Secretary,  
 26 Treasurer, the Chief Executive Officer ("CEO"), and owner of Defendant Media Network, Inc.;  
 27 the Chief Operating Officer ("COO") of Defendant New Age Opt-In, Inc.; and the President of  
 28 Defendant I-Permission, Inc. Microsoft is further informed and believes and thereupon alleges

1 that Mr. Mizhen, at all relevant times, was and is an agent for Media Network, Inc., New-Age  
 2 Opt-In, Inc., and I-Permission, Inc., doing the things herein alleged as both an individual and  
 3 within the course and within the scope of such agency – including in his capacity as President,  
 4 Secretary, Treasurer, CEO, COO, and owner – and with the permission, consent, at the direction,  
 5 and on behalf of Media Network, Inc., New-Age Opt-In, Inc. and I-Permission, Inc.

6 5. Defendant Media Network, Inc., doing business as Media Network (collectively  
 7 “Media Network”) is a corporation that Microsoft is informed and believes and thereupon  
 8 alleges, is organized and existing under the laws of the State of Connecticut, and maintains its  
 9 principal place of business at 420 East Main Street, Building 2 Suite 8, Branford, Connecticut  
 10 06405. Microsoft is informed and believes and thereupon alleges that Media Network has  
 11 registered and currently owns, controls, operates, and maintains website domains and storage  
 12 space on specialized computers or “servers” that it has and continues to use, among other things,  
 13 as part of its unlawful spam campaigns. Microsoft is further informed and believes and  
 14 thereupon alleges that Media Network is a part of a suite of entities that Mr. Mizhen owns,  
 15 controls, operates, and maintains to use, among other things, as part of unlawful spam  
 16 campaigns.

17 6. Defendant New Age Opt-In, Inc. (“New Age Opt-In”) is a corporation that  
 18 Microsoft is informed and believes and thereupon alleges, is organized and existing under the  
 19 laws of the State of Florida, and maintains its principal place of business at 420 East Main Street,  
 20 Building 2 Suite 8, Branford, Connecticut 06405. Microsoft is informed and believes and  
 21 thereupon alleges that New Age Opt-In has registered and currently owns, controls, operates, and  
 22 maintains website domains and/or storage space on specialized computers or “servers” that it has  
 23 and continues to use, among other things, as part of its unlawful spam campaigns. Microsoft is  
 24 informed and believes and thereupon alleges that New Age Opt-In is part of a suite of entities  
 25 that Mr. Mizhen owns, controls, operates, and maintains to use, among other things, as part of  
 26 unlawful spam campaigns.

27 7. Defendant I-Permission, Inc., doing business as I-Permission.Com, Inc. and I-  
 28 Permission (collectively “I-Permission”), is a corporation that Microsoft is informed and believes  
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1 and thereupon alleges, is organized and existing under the laws of the State of Connecticut, and  
 2 maintains its principal place of business at 127 Washington Ave., North Haven, Connecticut  
 3 06473-1715. Microsoft is informed and believes and thereupon alleges that I-Permission has  
 4 registered and currently owns, controls, operates, and maintains website domains and/or storage  
 5 space on specialized computers or “servers” that it has and continues to use, among other things,  
 6 as part of its unlawful spam campaigns. Microsoft further is informed and believes and  
 7 thereupon alleges that I-Permission is a part of suite of entities that Mr. Mizhen owns, controls,  
 8 operates, and maintains to use, among other things, as part of unlawful spam campaigns.

9 8. Defendant Dmitri Kovalsky (“Mr. Kovalsky”) is an individual who, Microsoft is  
 10 informed and believes and thereupon alleges, currently resides or otherwise may be found at one  
 11 or more of the following addresses: (1) 420 East Main St., Building 2 Suite 8, Branford,  
 12 Connecticut 06405; (2) Castillo 78 7B, Capital, C1414AWB, CF, Argentina; and (3) Bosh 39,  
 13 Glew, 1414 Argentina; or may otherwise be contacted by email at kovalskyd@hotmail.com,  
 14 dima@cp.e0.exme.net, and dima@argentina.com. Microsoft is informed and believes and  
 15 thereupon alleges that at all relevant times Mr. Kovalsky was and is the Chief Technical Officer  
 16 (“CTO”) for Defendant Media Network and employed with New Age Opt-In and I-Permission.  
 17 Microsoft is informed and believes and thereupon alleges that at all relevant times Mr. Kovalsky  
 18 was and is an agent for Media Network, New Age Opt-In, and I-Permission, doing the things  
 19 herein alleged within the course and scope of such agency – among other things, in his capacity  
 20 as CTO– and with the permission, consent, at the direction, and on behalf of Media Network,  
 21 New Age Opt-In, and I-Permission.

22 9. Defendant Muhammad Mohsan-ul Moula, a.k.a. Mohsan Ranak (“Mr. Ranak”) is  
 23 an individual who, Microsoft is informed and believes and thereupon alleges, can be contacted  
 24 by e-mail at ambitious.infotech@gmail.com; ambitiousit.info@yahoo.com, and at  
 25 ambitiousIT@live.com. Microsoft is further informed and believes and thereupon alleges that at  
 26 all relevant times Defendants employed Mr. Ranak to create millions of unauthorized Hotmail e-  
 27 mail accounts as part of Defendants’ scheme to circumvent Microsoft’s Hotmail spam filters,  
 28 doing this and the things herein alleged within the scope of such employment with the

1 permission, consent, and at the direction of Defendants.

2 10. Microsoft is informed and believes and thereupon alleges that Defendant  
 3 eSolutions Technology, Inc. is doing business as eSolutionsTech, AllBots, Inc. and JetBots, and  
 4 maintains websites at www.esolutionstech.com, www.allbots.info, and www.jetbots.com  
 5 (collectively “eSolutions”). Microsoft is unaware of the true name and capacity of Defendant  
 6 eSolutions, but is informed and believes and thereupon alleges that eSolutions can be contacted  
 7 through the registrants of its websites: (1) for eSolutions, Mafhh Chris at 23rd 3 F. St., Los  
 8 Angeles, California 95000; (2) for AllBots, Jill McGraw at Jackson Street, Suite 5, Daytona  
 9 Beach, Florida 33280; (3) for JetBots, Jen Wills at 95 19th Avenue Northeast, Suite 6836,  
 10 Seattle, Washington 98105; or can otherwise be contacted by e-mail at apnahaider@gmail.com,  
 11 allbots.info@gmail.com, esolutionsTech.com@gmail.com, jetbots.com@gmail.com or by  
 12 telephone at (206) 202-4298, (206) 666-2768, and (206) 312-1623. Microsoft is further  
 13 informed and believes and thereupon alleges that at all relevant times eSolutions manufactures,  
 14 traffics, and offers to the public – including Defendants – technologies, products, services,  
 15 devices, and components designed and produced for the purpose of circumventing technological  
 16 measures Microsoft uses to control access to its copyrighted works, doing this and the things  
 17 herein alleged within the scope of such employment with the permission, consent and at the  
 18 direction of Defendants.

19 11. Microsoft is informed and believes and thereupon alleges that Defendant  
 20 DeCaptcher is doing business as DeCaptcher.com and maintains a website at  
 21 www.decaptcher.com (collectively “DeCaptcher”). Microsoft is unaware of the true name and  
 22 capacity of Defendant DeCaptcher, but is informed and believes and thereupon alleges that  
 23 Decaptcher can be contacted through the registrant of its domain, Andrey A. Polev at Krasnaya  
 24 217, Solnechnogorsk, Moscow, Russian Federation 141506, by phone at 7-495-3127960, and by  
 25 e-mail alexhalt@gmail.com and admin@decaptcher.com. Microsoft is further informed and  
 26 believes and thereupon alleges that at all relevant times DeCaptcher manufactures, traffics, and  
 27 offers to the public – including Defendants – technologies, products, services, devices, and  
 28 components designed and produced for the purpose of circumventing technological measures

1 Microsoft uses to control access to its copyrighted works, doing this and the things herein alleged  
2 within the scope of such employment with the permission, consent and at the direction of  
3 Defendants.

4 12. Microsoft is unaware of the true names and capacities of defendants sued herein  
5 as JOHN DOES 1 - 20 ("Doe Defendants") and therefore sues these Doe Defendants by such  
6 fictitious names.

7 13. Microsoft is informed and believes and thereupon alleges that Mr. Mizhen, Media  
8 Network, New-Age Opt-In, I-Permission, Mr. Kovalsky, Mr. Ranak, eSolutions, DeCaptchaer,  
9 and Doe Defendants, at all relevant times, have and are, *inter alia*, using false and misleading  
10 messages to induce Microsoft's Hotmail users and others to visit web pages; manufacturing,  
11 trafficking, and offering to the public technology, products, services, devices and components  
12 designed or produced to circumvent technological measures Microsoft uses to control access to  
13 its copyrighted works; and accessing Microsoft's protected computers without authorization.  
14 Microsoft is further informed and believes and thereupon alleges that Mr. Mizhen, Media  
15 Network, New-Age Opt-In, I-Permission, Mr. Kovalsky, Mr. Ranak, eSolutions, DeCaptchaer,  
16 and Doe Defendants at all relevant times have and continue to engage in the fraudulent conduct  
17 alleged herein to circumvent Microsoft's Hotmail spam filters by, *inter alia*, abusing Microsoft's  
18 JMRP and SNDS. Microsoft is informed and believes and thereupon alleges that each of the  
19 fictitiously named Doe Defendants is responsible in some manner for the occurrences herein  
20 alleged, and that Microsoft's injuries as herein alleged were proximately caused by such Doe  
21 Defendants.

22 14. The actions alleged herein to have been undertaken by the Defendants were  
23 undertaken by each Defendant individually, were actions that each Defendant caused to occur,  
24 were actions that each Defendant authorized, controlled, directed, or had the ability to authorize,  
25 control or direct, and/or were actions in which each Defendant assisted, participated or otherwise  
26 encouraged, and are actions for which each Defendant is liable. Each Defendant aided and  
27 abetted the actions of the Defendants set forth below, in that each Defendant had knowledge of  
28 those actions, provided assistance and benefited from those actions, in whole or in part. Each of

1 the Defendants was the agent of each of the remaining Defendants, and in doing the things  
 2 hereinafter alleged, was acting within the course and scope of such agency and with the  
 3 permission and consent of the other Defendants.

### 4 **III. JURISDICTION AND VENUE**

5 15. This is a Complaint for an injunction, damages and other appropriate relief to  
 6 impede Defendants' "spamming" Microsoft's Hotmail customers with unsolicited commercial e-  
 7 mail messages, Defendants' on-going abuse of Microsoft's JMRP and SNDS, and to recover  
 8 damages resulting from Defendants' fraudulent conduct. In this action, Microsoft asserts  
 9 violations of the federal CAN-SPAM Act of 2003 (15 U.S.C. §7701 *et seq.*), the Digital  
 10 Millennium Copyright Act (17 U.S.C. § 1201 *et seq.*), the Computer Fraud Abuse Act (18 U.S.C.  
 11 § 1030 *et seq.*), the Washington Commercial Electronic Mail Act (RCW Ch. 19.190), the  
 12 Washington Consumer Protection Act (RCW Ch. 19.86), fraudulent disclosure and concealment,  
 13 negligent misrepresentation, common law trespass to chattels, common law conversion, and  
 14 breach of contract.

15 16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28  
 16 U.S.C. § 1338(a). This action also arises from Defendants' violations of Washington's  
 17 Consumer Protection Act (RCW 19.86), breach of contract, common law trespass to chattels,  
 18 common law conversion, fraud, fraudulent disclosure and negligent misrepresentation.  
 19 Accordingly, this Court has supplemental jurisdiction over the state law claims pursuant to 28  
 20 U.S.C. § 1367.

21 17. This Court has personal jurisdiction over the Defendants because the Defendants  
 22 have purposefully availed themselves of the opportunity to conduct commercial activities in this  
 23 forum, and this Complaint arises out of those activities. In particular, this case stems from  
 24 Defendants' abuse of Microsoft's Hotmail services, their unauthorized access of Microsoft's  
 25 computers, the abuse of Microsoft's JMRP and SNDS, and the abuse of Microsoft's users  
 26 through a spam e-mail campaign. Microsoft owns and maintains computers and other  
 27 equipment, including specialized computers or "servers" that process e-mail messages, host  
 28 customer generated content and otherwise support Microsoft's Hotmail services in the State of

Washington. Defendants are using false and misleading messages to induce Microsoft's Hotmail users and others to visit Defendants' and their customers' websites. Defendants have circumvented Microsoft's Hotmail spam filters to send an enormous number of spam e-mail messages to legitimate Hotmail users by, *inter alia*, creating millions of unauthorized Hotmail accounts and abusing Microsoft's JMRP and SNDS to manipulate statistics on Media Network's e-mail activity to deceive Microsoft that Media Network e-mails are not, in fact, spam.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events and/or omissions giving rise to the claims plead herein occurred in the Western District of Washington.

#### **IV. NATURE OF PLAINTIFF'S ONLINE SERVICES**

19. Microsoft owns and operates interactive online computer services that enable its customers to, among other things, access content and information on the Internet, exchange electronic mail ("e-mail"), and publish customer-generated content on the Internet. To provide these services, hereinafter referred to as "Online Services," Microsoft owns and maintains computers and other equipment, including specialized computers or "servers" that process e-mail messages, host customer-generated content and otherwise support Microsoft's Online Services. Microsoft maintains this equipment in Washington and California, among other states. E-mail sent to and from Microsoft's customers is processed through and stored on these computers. Customer-generated content is also stored on these computers.

20. Microsoft is an internet service provider ("ISP") and is an "interactive computer service" as defined by RCW § 19.190.010. Microsoft is a provider of "Internet access service[s]" as defined by 15 U.S.C. § 7702(11). Microsoft's computers and computer systems are "protected computers" under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(2).

21. One of Microsoft's Online Services is "Hotmail" which provides free and subscription-based e-mail on the Internet through a web-based e-mail service that can be accessed at [www.hotmail.com](http://www.hotmail.com). Hotmail allows account-holders to exchange e-mail messages with any other e-mail user throughout the world who has an Internet e-mail address. Hotmail has millions of registered accounts, whose users all have unique e-mail addresses ending, for



example, in “@hotmail.com, “@live.com” or “@hotmail.fr.”

22. To create a Hotmail e-mail account, a user must access Microsoft’s websites. Microsoft’s websites, including the Hotmail sign-up webpage, contain copyrighted Microsoft material. This copyrighted material is cached or temporarily copied onto a user’s computer’s main memory or Random Access Memory (“RAM”).

23. Before the system will generate a Hotmail e-mail account, a user must complete a Completely Automated Public Turing Test To Tell Computers and Humans Apart (“CAPTCHA”). CAPTCHAs are generally employed as a method of distinguishing computers, software, and other machines from humans. Among other things, CAPTCHAs prevent automated computer software, sometimes referred to as “Bots” or “Spiders,” from performing actions that might degrade the quality of service of a given system resulting from abuse or excessive expenditure of the system’s resources. One particular CAPTCHA Microsoft employs is character recognition that requires the user to enter a combination of random and visually obscured characters. In the example below, a user must correctly enter the eight characters “rWAibrUK” in the “Characters” field to complete the CAPTCHA.



Characters:

CAPTCHAs have been widely-deployed to protect systems vulnerable to, among other things, e-mail spam. Microsoft employs CAPTCHAs to control access to its copyrighted material. Microsoft also employs CAPTCHAs to prevent the use of automated computer programs from creating multiple Hotmail e-mail accounts at one time that could be used to send out spam or that would otherwise degrade the quality of Microsoft’s Hotmail services.

24. To obtain a Hotmail e-mail account, a user must also accept the terms of Microsoft’s Service Agreement and Privacy Statement. The Hotmail signup webpage advises prospective Hotmail account holders, “Clicking **I accept** means that you agree to the [Microsoft](#)

1 [service agreement](#) and [privacy statement](#).” The phrase “[Microsoft service agreement](#)” provides a  
 2 hyperlink to Microsoft’s Service Agreement (attached hereto as Appendix A). Among other  
 3 things, the Service Agreement prohibits:

- 4 a. using Hotmail services to send unsolicited bulk messages or unsolicited  
 5 commercial messages;
- 6 b. using an automated process or service – such as a BOT, a spider, periodic  
 7 caching of information stored by Microsoft, or “meta-searching” – to  
 8 access and/or use Hotmail services;
- 9 c. using any authorized means to modify or reroute, or attempt to modify or  
 10 reroute Hotmail services;
- 11 d. damaging, disabling, overburdening, or impairing Hotmail services (or the  
 12 network(s) connected to service) or interfering with anyone’s use and  
 13 enjoyment of the services; and
- 14 e. reselling or redistributing Hotmail services or any part of that service.

15 25. Microsoft’s Service Agreement also requires Hotmail users to abide by  
 16 Microsoft’s Anti-Spam Policy (attached hereto as Appendix B). Microsoft’s Service Agreement  
 17 includes a hyperlink to its Anti-Spam Policy. A hyperlink to Microsoft’s full Terms of Use is  
 18 available, *inter alia*, from Microsoft’s Anti-Spam Policy web page (attached hereto as Appendix  
 19 C).

## 20 **V. THE NATURE OF UNSOLICITED E-MAIL OR “SPAM”**

21 26. Unsolicited commercial e-mail is often referred to as “spam.” The transmission  
 22 of spam, a practice referred to as “spamming,” by persons known as “spammers,” is widely  
 23 condemned in the Internet community, and is of significant concern and economic detriment to  
 24 Microsoft and its customers.

25 27. By using the Internet to send unsolicited, mass quantities of commercial e-mail  
 26 messages, spammers not only obtain significant cost savings, but impose significant economic  
 27 burdens on ISPs such as Microsoft, on Microsoft’s customers and on the general public.

28 Although it costs very little for a spammer to transmit innumerable e-mail messages, handling

1 the enormous volume of e-mail initiated by spammers places a tremendous burden on Microsoft  
2 and consumers.

3 28. Microsoft's Online Services and the computers and computer systems providing  
4 those services are designed and created solely for the benefit and the non-commercial personal  
5 use of its customers. The computers and computer systems have finite capacity and are not  
6 designed to accommodate innumerable, automated mass mailings from spammers. Microsoft  
7 has been required to expend substantial amounts for new equipment to handle the mass mailings  
8 by spammers.

9 29. Spamming can and does result in the degradation and disruption of Microsoft's  
10 computers and computer systems. Spam demands storage space and processing capacity of  
11 Microsoft's computers and computer systems, making those resources unavailable to serve the  
12 legitimate needs of Microsoft's customers. The diversion of these resources from processing  
13 authorized e-mail impairs the normal operation of the computers and computer systems.  
14 Therefore, the value of that equipment is diminished by spamming.

15 30. Spamming also has significant impact on the recipients of spam. Individuals who  
16 receive spam must take the time and effort to sort through larger volumes of received e-mail,  
17 must attempt to distinguish spam from legitimate e-mail, and ultimately discard this unsolicited  
18 material. In an effort to mislead e-mail recipients and to make it more difficult for them to  
19 identify and discard these unsolicited advertisements, spammers frequently use deceptive  
20 methods such as, for example, false or misleading information in the e-mail headers and subject  
21 lines. When a spammer uses deceptive information to disguise spam as legitimate personal or  
22 business e-mail, it causes additional inconvenience and frustration to spam recipients.

23 31. Spam frequently involves products or services of questionable value, or materials  
24 of an adult or pornographic nature. Unsolicited advertisements for such products or services,  
25 often disguised, are a particularly obtrusive form of spam and are often the subject of customer  
26 complaints.

27 32. In an attempt to protect itself and its customers from spam, Microsoft has  
28 expended significant resources to develop technologies and practices to prevent its subscribers

1 from receiving spam. Spammers, however, continue to adopt practices and technological  
 2 devices to evade Microsoft's technologies and to frustrate Microsoft's efforts.

3 33. In passing the Commercial Electronic Mail Act, RCW Ch. 19.190, in 1998,  
 4 Washington became one of the first states to regulate spam. The legislature has recognized that  
 5 the spamming practices prohibited by the Act are "matters vitally affecting the public interests"  
 6 and are unfair and deceptive practices which impact Washington businesses and consumers.

7 34. Microsoft has a clearly articulated policy prohibiting the use of its services for  
 8 junk e-mail, spamming, or any unsolicited messages (commercial or otherwise). Microsoft's  
 9 Anti-spam policy, prohibits sending e-mails to or through Microsoft's Online Services where the  
 10 e-mails:

- 11 a. use or contain invalid or forged headers;
- 12 b. use or contain invalid or non-existent domain names;
- 13 c. employ any technique to otherwise misrepresent, hide or obscure any
- 14 information in identifying the point of origin or the transmission path;
- 15 d. use other means or deceptive advertising;
- 16 e. use a third party's internet domain name, or be relayed from or through a
- 17 third party's equipment, without the permission of the third party;
- 18 f. contain false or misleading information in the subject line or otherwise
- 19 contain false or misleading content;
- 20 g. fail to comply with additional technical standards described in Microsoft's
- 21 Anti-spam policy (at [privacy.microsoft.com/en-us/anti-spam.msp](http://privacy.microsoft.com/en-us/anti-spam.msp)); or
- 22 h. otherwise violate the applicable Terms of Use for the Services.

23 35. The Terms of Use for Microsoft's Online Services, can be accessed via a clearly  
 24 marked link on [home.live.com](http://home.live.com), as well as on the home pages for each of the services.

## 25 **VI. MICROSOFT'S JUNK E-MAIL REPORTING PROGRAM ("JMRP")**

### 26 **AND SMART NETWORK DATA SERVICES ("SNDS")**

27 36. Microsoft is committed to protecting its users from spam and preventing the use  
 28 of its services for junk e-mail, spamming, or any other unsolicited messages. Recognizing that

1 that legitimate and law-abiding senders of bulk e-mail should be distinguished from spammers  
2 and should not be negatively affected, Microsoft instituted a Junk E-mail Reporting Program  
3 intended to help senders of large or bulk e-mail messages to remove unwanted recipients from  
4 their distribution lists. (*See* Appendix D.)

5 37. Offered as a free program, Microsoft intended the JMRP to reduce the amount of  
6 unwanted or unsolicited e-mails recipients receive. Microsoft also intended the JMRP as an  
7 opportunity for senders of bulk e-mail to change their e-mailing practices in order to reduce junk  
8 e-mail reports and to remove recipients who do not welcome such contact from their distribution  
9 lists.

10 38. Senders of bulk e-mail that sign up for the program receive e-mail notifications  
11 that their messages have been identified by the system or by recipients as potential spam and  
12 blocked. This notification or “Feedback” provides senders of bulk e-mail an opportunity to  
13 mitigate the transmission of unsolicited e-mail as well as an opportunity for senders to change  
14 their e-mailing practices to reduce junk e-mail. In particular, a sender may establish that its bulk  
15 mail should not be blocked based on statistics regarding the percentage of its e-mails marked by  
16 recipients as spam.

17 39. To sign up for the JMRP, a company must sign a Junk Email Reporting  
18 Agreement. By signing the Junk Email Reporting Agreement, a company agrees to “use the  
19 Feedback only for purposes of reducing the occurrences of Junk Email.”

20 40. As part of the suite of services it provides legitimate and law-abiding senders of  
21 bulk e-mail, Microsoft also offers Smart Network Data Services, a free program that provides  
22 senders of bulk e-mail data about their e-mail messages, including e-mail activity, recipient  
23 complaint rates for a sender’s e-mail, and filter related information. Microsoft developed the  
24 SNDS to protect consumers from abusive activities but to also reverse the trend of eroding trust  
25 in e-mail communications. (*See* Appendix D.) Microsoft intends for participants of SNDS to  
26 use the information to improve the deliverability by removing from their distribution lists  
27 recipients that do not want to receive the senders’ e-mails.

28 41. Microsoft does not intend enrollment in JMRP or SNDS as a mechanism to

1 circumvent its Hotmail spam filters. Rather, both programs are intended to protect recipients of  
2 unwanted e-mail messages and to provide law-abiding senders of bulk e-mail a method of  
3 identifying recipients of unwanted e-mail to remove them their distribution lists. Microsoft, in  
4 fact, advises participants in its JMRP and SNDS programs that a sender of bulk e-mail that fails  
5 to reduce junk e-mail will be removed the program and failure to reduce junk e-mail can  
6 adversely affect deliverability of a sender's e-mails to Hotmail users.

## 7 **VII. DEFENDANTS AND THEIR UNLAWFUL CONDUCT**

8 **42.** Upon information and belief, Defendants developed and executed an elaborate  
9 scheme to circumvent Microsoft's Hotmail spam filters to disseminate a large quantity of spam  
10 e-mail advertisements to Microsoft's Hotmail users. Defendants, upon information and belief,  
11 enrolled in Microsoft's JMRP and SNDS under false pretense to gain access to detailed data  
12 about Defendants' e-mail activity, hired a team and used computer software to generate millions  
13 of unauthorized Hotmail e-mail accounts, and then used those unauthorized Hotmail e-mail  
14 accounts to sanitize Defendants' spam by identifying their own spam e-mail messages as "not  
15 spam." By doing so, Defendants fraudulently manipulated their e-mail activity statistics and  
16 used this manipulated data to justify to Microsoft that Defendants' e-mail messages were not  
17 spam. Defendants' deceptive conduct allowed them to circumvent Hotmail's spam filters and to  
18 continue to disseminate a vast quantity of spam e-mail messages to legitimate Hotmail users.

## 19 **MR. MIZHEN OWNS AND OPERATES A SUITE OF ENTITIES THAT DEFENDANTS USE** 20 **TO CONDUCT UNLAWFUL SPAM CAMPAIGNS**

21 **43.** Businesses will sometimes contract with an on-line advertising company to  
22 manage an on-line advertisement campaign. An on-line advertising company would be  
23 responsible for developing the advertisements, placing the advertisements either on websites as  
24 "banner ads" or through e-mail messages campaigns to internet users, and tracking the results of  
25 the campaign. An on-line advertising company would also be responsible for driving Internet  
26 "traffic" to the business' websites. On-line advertising companies might do so by sending bulk  
27 commercial e-mail messages to individuals. Internet users who receive these e-mails containing  
28 advertisements may click on the advertisements to visit the business' website, where the user

1 may then purchase products or services.

2 44. Upon information and belief, Defendant Mr. Mizhen owns, controls, operates, and  
3 maintains a group of entities, including Defendants Media Network, New Age Opt-In, and I-  
4 Permission. Media Network purports to be an “on-line advertising company” with “real  
5 solutions for today’s advertisers” that will develop, manage, operate, and track e-mail advertising  
6 campaigns. (See <http://www.medianetwork.com/publishers.x>.) New Age Opt-In claims to  
7 “specializ[e] in email marketing” and purports to offer on-line advertising services using e-mail  
8 channels. (See <http://www.newageoptin.com/aboutus.htm>.) I-Permission also purports to offer  
9 on-line advertising services using e-mail channels. (See <http://www.i-permission.com/about.x>.)

10 45. Defendants Media Network, New Age Opt-In, and I-Permission have registered  
11 and currently own, control, operate, and maintain website domains. Defendants Media Network,  
12 New Age Opt-In, and I-Permission also own, control, operate, and maintain storage space on  
13 specialized computers or “servers.”

14 46. On information and belief, Defendants have and continue to use the domains  
15 owned, controlled, operated, and maintained by Defendants Media Network, New Age Opt-In,  
16 and I-Permission for, among other things, an unlawful spam campaign by transmitting vast  
17 numbers of unsolicited commercial e-mail messages to Microsoft’s Hotmail users that, among  
18 other things, include these domains in the originating e-mail addresses contained in the header  
19 information of the spam e-mail messages or as hyperlinks within the commercial e-mail  
20 messages.

21 47. On information and belief, Defendants have and continue to use servers owned,  
22 operated, maintained, and controlled by Defendants Media Network, New Age Opt-In, and I-  
23 Permission for, among other things, an unlawful spam campaign by transmitting vast numbers of  
24 unsolicited commercial e-mails messages to Microsoft’s Hotmail users originating from these  
25 servers.

26 48. On information and belief, the unsolicited commercial e-mail messages  
27 Defendants have sent to Microsoft’s Hotmail users contain, *inter alia*, header information that is  
28 materially false or materially misleading, that contains deceptive headings, and that failed to

1 provide a valid physical postal address of the sender.

2 49. On information and belief, Defendants have profited from their unlawful spam  
3 campaign. Recipients of spam e-mail disseminated by Defendants Media Network's, New Age  
4 Opt-In's, and I-Permission's are induced to click on the links in the spam e-mail. Clicking on  
5 any of these links takes a recipient to one of the domains registered by Defendants Media  
6 Network, New Age Opt-In, I-Permission or by one of their customers. On information and  
7 belief, Defendants revenue is directly related to number of internet users that respond to its e-  
8 mail campaigns – measured by the number of visitors to a webpage – or on the given size of a  
9 particular campaign. To maximize the traffic to a customers' webpage or the size of an on-line  
10 ad campaign – and thus Defendants revenue – Defendants have and are disseminating spam e-  
11 mails and are misusing Microsoft's Hotmail services to drive traffic to websites operated by  
12 Defendants or their customers.

13 **DEFENDANTS' ABUSED MICROSOFT'S JMRP AND SNDS TO SANITIZE THEIR OWN SPAM**

14 50. To further their unlawful spam campaign, Defendants developed and executed a  
15 plan to circumvent Microsoft's Hotmail spam filters.

16 51. As early as May 2008, Microsoft's Hotmail spam filters were blocking unsolicited  
17 commercial e-mail messages originating from IP addresses used by Media Network. Mr.  
18 Kovalsky enrolled Media Network into Microsoft's Junk E-Mail Reporting Partner Program  
19 giving Defendants access to Microsoft's JMRP and SNDS programs. (See Appendix E.) When  
20 he enrolled Media Network into Microsoft's JMRP, Mr. Kovalsky represented, *inter alia*, that (a)  
21 Media Network followed standard CAN-SPAM Act practices, (b) identified a homepage that  
22 allowed recipients to opt-out of the receiving the e-mail, and (c) stated that Media Network could  
23 remove recipients that complained from its e-mail lists.

24 52. By enrolling in the JMRP and SNDS programs, Defendants would also receive  
25 notifications or "Feedback" when recipients marked its e-mail messages as "junk e-mail" or  
26 "spam" and when Hotmail's spam filters blocked Media Network's bulk e-mail messages.  
27 Under the JMRP and SNDS, Media Network agreed to use this Feedback only to reduce  
28 occurrences of recipients receiving unsolicited commercial e-mail. Upon information and belief,



1 shortly after enrolling with Microsoft's JMRP and SNDS, Defendants began their scheme to  
2 circumvent Hotmail's spam filters.

3 53. Upon information and belief, Defendants hired Mr. Ranak to create millions of  
4 unauthorized Hotmail email accounts to circumvent Microsoft's spam filter. Mr. Ranak offers to  
5 create thousands of "verified" Hotmail e-mail accounts with usernames and passwords for as  
6 little as \$15.00 per thousand email accounts. On information and belief, as part of the services  
7 he offers, Mr. Ranak manufactures, traffics, and offers to the public technologies, products,  
8 services, devices, and components designed and produced for the purpose of circumventing  
9 technological measures used to control access to copyrighted works, including technologies  
10 capable of bypassing the CAPTCHAs Microsoft uses to protect the copyrighted material on its  
11 Hotmail webpages.

12 54. Upon information and belief, on numerous occasions, Mr. Ranak created and  
13 provided to Defendants unauthorized Hotmail e-mail accounts. On information and belief, Mr.  
14 Ranak – using technologies, products, services, devices, and components designed and produced  
15 for the purpose of circumventing technological measures used to control access to copyrighted  
16 works – automatically generated these Hotmail e-mail accounts that Defendants then used to  
17 send unsolicited commercial e-mail to legitimate Hotmail users. Mr. Ranak, by creating these  
18 Hotmail e-mail accounts and accessing Microsoft's Hotmail services, has explicitly agreed to  
19 abide by Microsoft's Service Agreement, Anti-Spam Policy, and Terms of Use.

20 55. Upon information and belief, Mr. Mizhen and Mr. Kovalsky also purchased  
21 software from eSolution that allowed Defendants to automatically generate unauthorized  
22 Hotmail e-mail accounts. On information and belief, eSolutions manufactures, traffics, and  
23 offers to the public technologies, products, services, devices, and components designed and  
24 produced for the purpose of circumventing technological measures used to control access to  
25 copyrighted works. On information and belief, eSolutions offered to Defendants products and  
26 services – including "Hotmail Accounts Creator," "Hotmail Accounts Creator (Winsock),"  
27 "Hotmail Accounts Verifier (Winsock)," and "CAPTCHA Bypassers" – that Defendants used to  
28 automatically generate unauthorized Hotmail e-mail accounts. These products and services,

1 among other things, were designed to bypass Microsoft's technological measures, including the  
2 CAPTCHAs Microsoft employs to control access to the copyrighted material on its Hotmail  
3 webpages. By creating these Hotmail e-mail accounts and accessing Microsoft's Hotmail  
4 services, Defendants explicitly agreed to abide by Microsoft's Service Agreement, Terms of Use,  
5 and Anti-Spam Policy.

6 56. Upon information and belief, to use the products offered by eSolutions,  
7 Defendants also purchased services from Decaptcher. On information and belief, Decaptcher  
8 manufactures, traffics and offers to the public technologies, products, services, devices, and  
9 components designed and produced for the purpose of circumventing technological measures  
10 used to control access to copyrighted works. On information and belief, Decaptcher offered to  
11 Defendants technologies, products, services, devices, and components that were designed to  
12 bypass Microsoft's technological measures, including CAPTCHAs Microsoft employs to control  
13 access to the copyrighted material on its Hotmail webpages.

14 57. Defendants also hired Mr. Ranak to assist with circumventing Hotmail's spam  
15 filters. Mr. Kovalsky and Mr. Mizhen negotiated a deal to engage Mr. Ranak and a team of three  
16 individuals to work twenty-four (24) hours a day and seven (7) days a week to mark Defendants'  
17 spam e-mail messages sent to the purchased Hotmail accounts as "not junk." Upon information  
18 and belief, as part of its e-mail campaigns, Defendants would send its spam e-mail messages not  
19 only to legitimate Hotmail users, but also to the unauthorized Hotmail e-mail accounts it  
20 purchased from Mr. Ranak. Microsoft's Hotmail spam filters would identify Defendants' e-mail  
21 messages as spam and place those in a "Junk" folder. Using the purchased Hotmail e-mail  
22 accounts, Mr. Ranak and his team would transfer Defendants' spam e-mail messages from the  
23 "Junk" folder into the "Inbox" in each purchased Hotmail e-mail account receiving Media  
24 Network's spam.

25 58. Upon information and belief, using the products and services provided by Mr.  
26 Ranak, eSolutions, and Decaptcher, Defendants created millions of Hotmail e-mail accounts to  
27 sanitize their own spam e-mail messages. On information and belief, for more than six (6)  
28 months, Mr. Ranak and his team worked 24 hours a day, seven days a week, in three shifts per

1 day to move up to eighty-five of Defendants' spam e-mail messages per purchased Hotmail e-  
2 mail account from the "Junk" folders to the "Inbox" of the purchased Hotmail e-mail accounts.  
3 Microsoft is informed and believes and thereupon alleges that using this process, Mr. Ranak and  
4 his team transferred as much as 200,000 per day of Defendants' spam e-mail messages from  
5 "Junk" folders to "Inbox" folders. Transferring Defendants' e-mails from "Junk" folders to  
6 "Inbox" folders on such a large scale manipulated the statistics regarding Defendants' e-mail  
7 activity, specifically by artificially lowering the recipient-reported complaint level.

8 59. On more than 100 instances between May 2008 and April 2010, Microsoft's  
9 Hotmail spam filters blocked bulk e-mail messages sent to legitimate Hotmail users originating  
10 from Defendants. Under the JMRP and SNDS, Defendants – specifically Mr. Kovalsky –  
11 received e-mail notifications or "Feedback" identifying the IP addresses from which the blocked  
12 messages originated and requesting that Mr. Kovalsky contact Microsoft's Windows Live  
13 Hotmail Domain Support to reconcile the problem. Mr. Kovalsky forwarded these messages to  
14 Mr. Mizhen.

15 60. Between May 2008 and April 2010, Mr. Kovalsky responded to Microsoft and  
16 represented that the blocked messages were not spam. As justification that the Media Network  
17 e-mail messages were not spam, Mr. Kovalsky referenced the manipulated complaint level  
18 statistics. Mr. Kovalsky, however, failed to disclose that Defendants, contrary to the JMRP  
19 Agreement, used the Feedback regarding Defendants' e-mail activity to circumvent Hotmail's  
20 spam filters. Specifically, Mr. Kovalsky failed to disclose that Defendants had, in fact,  
21 artificially lowered the recipient-reported complaint level number by creating and purchasing  
22 millions of unauthorized Hotmail e-mail accounts and then hiring a team to sanitize Defendants  
23 spam e-mail messages by transferring those e-mail messages from the purchased Hotmail e-mail  
24 accounts' "Junk" folders to their "Inboxes." Nor did Mr. Kovalsky disclose to Microsoft that  
25 Defendants had created these Hotmail e-mail accounts in violation of Microsoft's Service  
26 Agreement, Terms of Use, and Anti-Spam Policy.

27 61. Based on Mr. Kovalsky's representations, Microsoft unblocked Defendants' spam  
28 e-mail messages. Consequently, Defendants' spam e-mail messages were sent to legitimate

1 Hotmail users. Had Microsoft known Mr. Kovalsky's representations were false or had known  
2 of the facts Mr. Kovalsky concealed, Microsoft would not have unblocked Defendant's spam e-  
3 mail messages.

4 62. Defendants' deception has undermined a fundamental purpose of Microsoft's  
5 JMRP – namely protecting Internet users from unsolicited commercial e-mail messages.  
6 Defendants' conduct also undermines Microsoft's efforts to distinguish legitimate and lawful  
7 senders of bulk e-mail from unlawful senders of spam.

8 63. Defendants' conduct has caused and, if not restrained, will continue to cause,  
9 Microsoft's computer equipment and servers to process billions more of improper spam e-mails.  
10 These e-mails threaten to delay and otherwise adversely affect Hotmail subscribers in sending  
11 and receiving legitimate e-mail, and have resulted in and continue to result in significant costs to  
12 Microsoft. These e-mails are a detriment to users' experiences of Microsoft's high-quality e-  
13 mail services and are a detriment to Microsoft's goodwill and brand. Microsoft is further injured  
14 because Defendants' actions require Microsoft to unfairly bear the costs of taking action to  
15 prevent and reduce spam e-mail.

16 64. Defendants' actions have caused and, if not restrained, will continue to cause  
17 Microsoft to unfairly bear costs to operate and support its JMRP and SNDS, as Defendants  
18 abused the JMRP and SNDS mitigation policies to circumvent Microsoft's spam filters, thus  
19 allowing Defendants to continue to violate Microsoft's Service Agreement, Terms of Use, and  
20 Anti-Spam Policy by sending unsolicited bulk e-mail with commercial messages. Defendants'  
21 actions are a detriment to users' experiences of Microsoft's high-quality Hotmail services and  
22 are a detriment to Microsoft's goodwill and brand. Microsoft is further injured because  
23 Defendants' actions require Microsoft to unfairly bear the costs of taking action to prevent and  
24 reduce the abuse of its JMRP.

25 65. Upon information and belief, Defendants have profited from their unlawful spam  
26 campaign, abuse of Microsoft's JMRP and SNDS mitigation policies, and deceptive conduct.  
27 Recipients of spam e-mail disseminated by the Defendants are induced to click on links in the  
28 spam e-mail and visit Defendants' and their customers' websites.

**MR. MIZHEN IS PERMANENTLY ENJOINED FROM SPAMMING MICROSOFT'S HOTMAIL USERS**

66. In 2003, Microsoft filed a lawsuit against Mr. Mizhen and his company Merchant Commerce, LLC ("Merchant Commerce") in the State of Washington Superior Court for King County (Case No. 03-2-15706-6SEA) ("the Lawsuit"), alleging, *inter alia*, that Mr. Mizhen and Merchant Commerce had engaged in an unlawful spam campaign using Microsoft's Hotmail Services and directed specifically toward Microsoft's Hotmail users. Microsoft asserted claims for common law breach of contract, trespass to chattels, and conversion as well as violations of the CAN-SPAM Act, the Washington Commercial Electronic Mail Act, the Washington Consumer Protecting Act, the federal Computer Fraud and Abuse Act, and California Business and Professions Code.

67. On February 23, 2004, Microsoft, Mr. Mizhen, and Merchant Commerce executed a Confidential Release and Settlement Agreement (the "Settlement Agreement") that settled Microsoft's claims against Mr. Mizhen and Merchant Commerce. The Settlement Agreement is attached hereto as Appendix F.

68. On February 27, 2004, Microsoft, Mr. Mizhen and Merchant Commerce executed a Stipulated Judgment (the "Judgment") and a Stipulated Permanent Injunction ("Permanent Injunction") for \$2,000,000. The Superior Court of the State of Washington for King Count awarded Microsoft a \$2,000,000 judgment as well as post-judgment interest at twelve (12) percent per annum. The Judgment and Permanent Injunction are attached hereto as Appendix G.

69. The Permanent Injunction prohibited Mr. Mizhen, Merchant Commerce and their agents, officers, contractors, directors, shareholders, employees, subsidiary companies or entities, affiliated or related companies and entities, assignees, and successors-in-interest from among other things:

- a. sending spam e-mail in violation of Washington's Commercial Electronic Mail Act or the federal CAN-SPAM Act;
- b. using Microsoft's Hotmail Services – including MSN Internet Access or MSN Hotmail – in violation of or in a manner inconsistent with the MSN Terms of Use;

- 1 c. obtaining, compiling, selling, trafficking in, or trading, or directing aiding,  
2 or conspiring with others to obtain, compile, sell, traffic in, or trade e-mail  
3 addresses for sending or delivery of any unsolicited bulk or unsolicited  
4 commercial e-mail in violation of state or federal law;
- 5 d. opening, creating or accessing, or directing, aiding, facilitating or  
6 conspiring with others to open, create, or access any Microsoft's  
7 Communication Services accounts, including but not limited to  
8 Microsoft's Hotmail e-mail accounts inconsistent with MSN Terms of  
9 Use; and
- 10 e. selling, offering for sale or distributing, or directing, aiding or conspiring  
11 with others to sell, offer for sale or distribute any software that allows the  
12 user to send unsolicited bulk or unsolicited commercial e-mail to, among  
13 others, Microsoft's Hotmail users.

14 70. Mr. Mizhen and Merchant Commerce acknowledged that a violation of the  
15 Permanent Injunction would entitle Microsoft and injured third parties, among other damages:

- 16 a. if an Internet Service Provider, the greater of \$25,000 or \$2.00 per 1000 e-  
17 mail messages sent, corresponding to the claimant's reputation and lost  
18 profit damages, as well as attorneys' fees, expenses, and costs;
- 19 b. if an end user such as domain owner or internet subscriber, liquidated  
20 damages of \$1,000 per e-mail, as well as all attorneys' fees, expenses and  
21 costs.

22 71. Under Paragraph 3 of the Permanent Injunction, Mr. Mizhen and Merchant  
23 Commerce were required to provide all employees, agents, contractors, or affiliates acting on  
24 their behalf in regard to electronic marking a copy of the Permanent Injunction.

25 72. The Settlement Agreement, moreover, entitled Microsoft to damages resulting  
26 from Mr. Mizhen or Merchant Commerce's breaches of the Permanent Injunction. Paragraph 5  
27 of the Settlement Agreement entitled Microsoft to additional relief to redress the additional harm  
28 resulting from Mr. Mizhen and/or Merchant Commerce's conduct. Specifically, any breach or

1 violation of the Settlement Agreement and/or the Permanent Injunction, or for any other  
 2 unlawful activity, entitled Microsoft to enforce all of its legal remedies for the breach and/or  
 3 wrongful activity, including but not limited to, recovering actual damages including: (1) the  
 4 maximum amount of statutory damages under applicable statutes and acts, (2) profits of Mr.  
 5 Mizhen and Merchant Commerce, (3) treble damages, and/or (4) attorney's fees and costs.

6 73. Under Paragraph 6 of the Settlement Agreement, Mr. Mizhen and Merchant  
 7 Commerce acknowledged the irreparable harm injury that a breach of the Settlement Agreement  
 8 or Permanent Injunction would cause Microsoft and, as such, gave Microsoft the right to seek  
 9 immediate injunctive relief to prohibit any such violation of the Settlement Agreement and/or  
 10 Permanent Injunction.

11 74. Paragraph 8 of the Settlement Agreement entitled Microsoft to recover the costs  
 12 and actual expenses associated with enforcement of the Settlement Agreement and/or Permanent  
 13 Injunction, including reasonable attorneys' fees and costs.

14 75. Microsoft is informed and believes and thereupon alleges that at all relevant times  
 15 Defendants are and were acting within the course and scope of such agency and with permission,  
 16 consent, at the direction of, and on behalf of the other Defendants – specifically at the direction  
 17 of Mr. Mizhen as the principal for Defendants Media Network, New Age Opt-In, and I-  
 18 Permission.

19 76. Microsoft is informed and believes and thereupon alleges that the Defendants,  
 20 through their conduct alleged herein, have been in continuous breach of the Permanent  
 21 Injunction and Settlement Agreement by, among other things:

- 22 a. violating Microsoft's Service Agreement, Terms of Use, and Anti-Spam
- 23 Policy;
- 24 b. sending a vast number of unsolicited commercial e-mail messages
- 25 Hotmail users in violation of Washington's Commercial Electronic Mail
- 26 Act and the CAN-SPAM Act;
- 27 c. purchasing and generating millions of Hotmail e-mail accounts to send
- 28 vast quantities of spam e-mail messages to legitimate Microsoft Hotmail

- 1 use and to circumvent Microsoft's Hotmail spam filters and JMRP;
- 2 d. obtaining, compiling, selling, trafficking in, and directing, aiding, or
- 3 conspiring with others to obtain, compile, sell, traffic in, or trade e-mail
- 4 addresses for sending or delivery of any unsolicited bulk or unsolicited
- 5 commercial e-mail in violation of state or federal law; and
- 6 e. selling, offering for sale or distributing, or directing, aiding or conspiring
- 7 with others to sell software that allows a user to send unsolicited
- 8 commercial e-mail messages to Microsoft's Hotmail users.

9 77. Defendants' breaches of the Permanent Injunction and Settlement Agreement

10 have caused and, if not restrained, will continue to cause, Microsoft's computer equipment and

11 servers to process billions more of improper spam e-mail and will further erode the quality and

12 integrity of Microsoft's Hotmail services. These e-mails threaten to delay and otherwise

13 adversely affect Hotmail subscribers in sending and receiving legitimate e-mail, and have

14 resulted in and continue to result in significant costs to Microsoft. These e-mails are a detriment

15 to users' experiences of Microsoft's high-quality e-mail services and are a detriment to

16 Microsoft's goodwill and brand. Microsoft is further injured because Defendants' actions

17 require Microsoft to unfairly bear the costs of taking action to prevent and reduce spam e-mail.

18 78. Upon information and belief, Defendants have profited from and been unjustly

19 enriched by their breaches of the Settlement Agreement and Permanent Injunction. Recipients of

20 spam e-mail disseminated by the Defendants are induced to click on links in the spam e-mail and

21 visit Defendants' or their customers' websites.

## 22 **VIII. CLAIMS FOR RELIEF**

### 23 **FIRST CLAIM FOR RELIEF**

24 (Violation Of The Federal Controlling The Assault Of Non-Solicited Pornography And

25 Marketing Act Of 2003 ("CAN-SPAM" – 15 U.S.C. § 7704(a)(1), (2), (5), (b)(2) and (3))

26 79. Microsoft realleges and incorporates by this reference each and every allegation

27 set forth in paragraphs 1 through 78 above.



1           80.     Microsoft is a provider of internet access services. Microsoft owns and operates  
2 interactive online computer services that enable its customers to, *inter alia*, access content and  
3 information on the Internet, including proprietary and exclusive content, e-mail, and other  
4 Internet services.

5           81.     Defendants initiated the transmission of commercial electronic mail messages that  
6 contain header information that is materially false or materially misleading, to protected  
7 computers, which are used in interstate and foreign commerce and communication.

8           82.     Defendants engaged in a pattern or practice of initiating the transmission, to  
9 protected computers, of commercial electronic mail messages:

- 10           a.     knowing that the subject headings of the messages would be likely to
- 11                   mislead a recipient, acting reasonably under the circumstances, about a
- 12                   material fact regarding the contents or subject of the message; and
- 13           b.     that failed to provide a clear and conspicuous notice of the opportunity to
- 14                   decline to receive further commercial electronic mail messages from the
- 15                   sender; and
- 16           c.     that failed to provide a valid physical postal address of the sender.

17           83.     Defendants initiated the transmission and relayed, to protected computers,  
18 through unauthorized access, of electronic mail messages that violate 15 U.S.C. § 7704(a), and  
19 assisted in the initiation of such messages by providing electronic mail addresses, knowing that  
20 the electronic mail addresses of the recipients were obtained using automated means from an  
21 Internet website or proprietary online service operated by another person, and such website or  
22 service included a notice stating that the operator will not give, sell, or otherwise transfer  
23 addresses maintained by such website or service to any other party for the purpose of initiating,  
24 or enabling others to initiate, electronic mail messages.

25           84.     Defendants used computers, software, scripts, and other automated means –  
26 including but not limited to “Hotmail Accounts Creator (Winstock),” “Hotmail Accounts  
27 Verifier (Winstock)” and “CAPTCHA Bypasser” – to automatically create and register millions  
28 of Hotmail e-mail accounts from which to transmit to a protected computer or enable another

1 person to transmit to a protected computer, a commercial e-mail message that is unlawful under  
2 section 15 U.S.C. § 7704(a).

3 85. Defendants' actions were willful and knowing.

4 86. Microsoft has been adversely affected by Defendants' violation of CAN-SPAM.  
5 Defendants' actions violated 15 U.S.C. § 7704(a)(1), (a)(2), (a)(5), (b)(2) and (b)(3), and entitle  
6 Microsoft to injunctive relief, statutory damages, aggravated damages, costs, and attorneys fees.

7 **SECOND CLAIM FOR RELIEF**

8 (Violation of the Washington Commercial Electronic Mail Act (RCW Ch. 19.190) and the  
9 Washington Consumer Protection Act (RCW Ch. 19.86))

10 87. Microsoft realleges and incorporates by reference each and every allegation set  
11 forth in paragraphs 1 through 86 above.

12 88. Defendants initiated the transmission or assisted in the transmission of  
13 commercial e-mail messages from a computer located in Washington and/or to an e-mail address  
14 that they knew, or had reason to know, is held by a Washington resident. Those commercial  
15 e-mail messages:

16 a. used Microsoft's or another third party's Internet domain name without  
17 permission;

18 b. misrepresented or obscured information identifying the point of origin or  
19 the transmission path of a commercial electronic e-mail message; or

20 c. contained false or misleading information in the subject line.

21 89. As a result of Defendants' actions, Microsoft has been damaged in an amount to  
22 be proven at trial

23 90. Defendants' actions violated RCW § 19.190.020, and entitle Microsoft to actual  
24 damages or statutory damages of \$1,000 per e-mail, whichever is greater.

25 91. Defendants' actions affected the public interest, are unfair or deceptive acts in  
26 trade or commerce and unfair methods of competition, and violated the Washington Consumer  
27 Protection Act, RCW Ch. 19.86. Microsoft is entitled to treble damages and an award of its  
28 attorneys' fees and costs under that Act.

**THIRD CLAIM FOR RELIEF**

(Violation of the Digital Millennium Copyright Act (17 U.S.C. § 1201))

92. Microsoft realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 91 above.

93. Microsoft's websites, including the webpages associated with its Hotmail services, contain Microsoft copyrighted material.

94. Microsoft's Hotmail services are governed by Microsoft's Service Agreement, Terms of Use, and Anti-Spam Policy that give a user a limited non-exclusive license to copy the Microsoft copyrighted material from its Hotmail webpages.

95. Microsoft controls access to copyrighted material on its websites, including its copyrighted material on the webpages associated with its Hotmail services, by employing technological measures, including CAPTCHAs.

96. Defendants manufacture, import, offer to the public, provide, market or otherwise traffic in technologies, devices, components, and parts thereof – including "Hotmail Accounts Creator," "Hotmail Accounts Creator (Winsock)," "Hotmail Accounts Verifier (Winsock)" and "CAPTCHA Bypasser" – that are primarily designed and produced for the purpose of circumventing a technological measure that effectively controls access to a copyrighted work.

97. Defendants manufacture, import, offer to the public, provide, or otherwise traffic in technologies, devices, components, and parts thereof – including "Hotmail Accounts Creator," "Hotmail Accounts Creator (Winsock)," "Hotmail Accounts Verifier (Winsock)" and "CAPTCHA Bypasser" – that are primarily designed or produced for the purpose of circumventing protections afforded by a technological measure that effectively protects a right of a copyright owner under the Copyright Act, including the right to grant limited access to its copyrighted work by preventing automated access to the copyrighted material on its Hotmail webpages.

98. Defendants' manufacturing, importation, offers to the public, trafficking and use of technologies, devices, components, and parts thereof – including "Hotmail Accounts Creator," "Hotmail Accounts Creator (Winsock)," "Hotmail Accounts Verifier (Winsock)" and

1 “CAPTCHA Bypasser” – allows third parties, including Defendants and their customers, access  
2 to Microsoft’s copyrighted material on its Hotmail webpages.

3 99. The access provided by Defendants’ technologies, devices, components, and parts  
4 thereof is unauthorized as it breaches to terms of Microsoft’s Service Agreement, Terms of Use  
5 and Anti-Spam Policy.

6 100. This unauthorized access to the copyrighted material on Hotmail webpages  
7 infringes Microsoft’s copyrights as it entails, among other things, copying of its Hotmail  
8 webpages in excess of the limited non-exclusive license.

9 101. As a result of Defendants’ conduct, Microsoft has been damaged in an amount to  
10 be proven at trial.

#### 11 **FOURTH CLAIM FOR RELIEF**

12 (Violation of the Computer Fraud and Abuse Act (18 U.S.C. §§ 1030(a)(4) and (a)(5))

13 102. Microsoft realleges and incorporates by reference each and every allegation set  
14 forth in paragraphs 1 through 101 above.

15 103. Microsoft’s computers hosting the Hotmail services are “protected computer[s]”  
16 within the scope of the 18 U.S.C. § 1030(e)(2)(B), in that they are used in interstate commerce or  
17 communication.

18 104. Defendants knowingly, with intent to defraud, and without authorization or in  
19 excess of authorization, accessed the Microsoft-owned protected computers, and by means of  
20 such conduct, further the intended fraud and obtained without payment services valued in excess  
21 of \$5000 in a one-year period, within the scope of 18 U.S.C. § 1030(a)(4).

22 105. Defendants knowingly caused the transmission of information and commands,  
23 and as a result of such conduct, intentionally caused damage without authorization to the  
24 Microsoft-owned protected computers, within the scope of 18 U.S.C. § 1030(a)(5).

25 106. The Defendants caused losses in excess of \$5000 and damage to Microsoft’s  
26 protected computers in a one year period, in that their conduct has impaired the integrity and  
27 availability of data, programs, systems, and information provided to Microsoft’s Hotmail users.

28 Defendants have also caused losses in excess of \$5000 as Microsoft has had to incur costs to

investigate Defendants' unauthorized access of Microsoft's computers and to repair and implement safety measures to prevent further unauthorized access by Defendants.

107. Under 18 U.S.C. § 1030(g), Microsoft is entitled to compensatory damages and injunctive or other equitable relief.

### **FIFTH CLAIM FOR RELIEF**

(Washington Consumer Protection Act (RCW Ch. 19.86))

108. Microsoft realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 107 above.

109. Defendants' activities in targeting Microsoft's programs and customers through the spam campaign, misuse of Hotmail accounts and the misuse of Microsoft's JMRP and SNDS constitute an unfair and deceptive acts or practices.

110. As a result of Defendants' conduct, Microsoft has been damages in an amount to be proven at trial.

111. Defendants' acts and omissions affected the public interest, are unfair and deceptive acts or practices in trade or commerce and unfair methods of competition, and violated the Washington Consumer Protection Act, Ch. 19.86. Microsoft is entitled to treble damages and an award of attorneys fees under this Act.

112. As a direct result of Defendants' actions, Microsoft has suffered and continues to suffer irreparable harm for which Microsoft has no adequate remedy at law, and which will continue unless Defendants' actions are enjoined.

### **SIXTH CAUSE OF ACTION**

(Fraudulent Misrepresentation and Fraudulent Concealment)

113. Microsoft realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 112 above.

114. Defendants intentionally, willfully and purposefully misrepresented to Microsoft that Defendants' e-mail messages sent to legitimate Hotmail users were not spam e-mail messages.

115. Defendants intentionally, willfully and purposefully misrepresented to Microsoft

1 that the level of Defendants' e-mail messages being reported as spam.

2 116. Defendants intentionally, willfully and purposefully failed to disclose that they  
3 had purchased millions of Hotmail e-mail accounts with the purpose of manipulating bulk e-mail  
4 and spam reporting statistics to circumvent Microsoft's Hotmail spam filters and to deliver vast  
5 quantities of spam e-mail messages to legitimate Hotmail users in contravention of the CAN-  
6 SPAM Act and the Washington Commercial Electronic Mail Act.

7 117. Defendants intentionally, willfully and purposefully failed to disclose that they  
8 had manipulated Microsoft's spam reporting statistics for Defendants' e-mail messages by  
9 sending vast quantities of spam e-mail messages to unauthorized Hotmail e-mail accounts  
10 Defendants had purchased and marking those e-mail messages in "not spam" or "not junk"  
11 within the purchased Hotmail e-mail accounts.

12 118. Defendants intentionally, willfully and purposefully failed to disclose that they  
13 had violated Microsoft's Service Agreement, Terms of Use, and Anti-Spam Policy by their  
14 conduct alleged herein.

15 119. At the time Defendants made the aforementioned misrepresentations, Microsoft  
16 was ignorant of the falsity of Defendants' representations and believed them to be true. In  
17 reliance on these representations, Microsoft was induced to, among other things, remove the  
18 spam blocks on Defendants' spam e-mail messages, consequently allowing legitimate Hotmail  
19 users to receive vast quantities of spam e-mail messages.

20 120. Defendants had a duty to disclose all material facts and abstain from making false  
21 misrepresentations. As a direct and proximate result of Defendants' misrepresentations and  
22 concealments as alleged herein, Microsoft was induced to, among other things, remove the spam  
23 blocks on Media Network's spam e-mail messages, consequently allowing Hotmail users to  
24 receive a vast quantity of spam e-mail messages.

25 121. Defendants' aforementioned misrepresentations and concealments were  
26 intentional misrepresentations and concealment of material facts known to Defendants within the  
27 intention of depriving Microsoft of property and legal rights or otherwise causing injury to  
28 Microsoft such that an award for exemplary and punitive damages is appropriate under

1 Washington law.

2 **SEVENTH CLAIM FOR RELIEF**

3 **(Negligent Misrepresentation)**

4 122. Microsoft realleges and incorporates by reference each and every allegation set  
5 forth in paragraphs 1 through 121 above.

6 123. Defendants made representations to Microsoft that were not true and failed to  
7 disclose information that made their representations false.

8 124. Defendants' representations and omissions were material to Microsoft's decision  
9 to unblock Defendants' e-mail messages. Microsoft would not have unblocked those e-mails if it  
10 knew of Defendants' false representations and material omissions.

11 125. Defendants had no reasonable grounds to believe that their representations were  
12 true.

13 126. Defendants made their false representations with the intent to induce Microsoft to  
14 rely on them.

15 127. Had Microsoft known the falsity of Defendants' representations and the actual  
16 facts Defendants had concealed, Microsoft would not have unblocked Media Network's spam e-  
17 mail messages or allowed them to continue to participate in the JMRP or SNDS.

18 128. At the time Defendants made the aforementioned misrepresentations, Microsoft  
19 was ignorant of the falsity of Defendants' representations and believed them to be true. In  
20 reliance on these representations, Microsoft was induced to, among other things, remove the  
21 spam blocks on Defendants' spam e-mail messages, consequently allowing legitimate Hotmail  
22 users to receive a vast quantity of spam e-mail messages.

23 129. Defendants had a duty to disclose all material facts and abstain from making false  
24 misrepresentations. As a direct and proximate result of Defendants' misrepresentations and  
25 concealments as alleged herein, Microsoft was induced to, among other things, remove the spam  
26 blocks on Media Network's spam e-mail messages, consequently allowing Hotmail users to  
27 receive a vast quantity of spam e-mail messages.

**EIGHTH CLAIM FOR RELIEF**

**(Trespass to Chattels)**

130. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 129 above.

131. The computers, computer networks and computer services that constitute Microsoft's Hotmail e-mail system are the personal property of Microsoft.

132. The computers, computer networks and computer services that constitute Microsoft's Hotmail system are the personal property of Microsoft.

133. Defendants were aware that their actions were specifically prohibited by Microsoft's Service Agreement, Anti-Spam Policy and Terms of Service and/or were on notice that their actions were not authorized by Microsoft in any way.

134. Defendants have knowingly, intentionally and without authorization used and intentionally trespassed upon Microsoft's property.

**NINTH CLAIM FOR RELIEF**

**(Conversion)**

135. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 134 above.

136. Defendants have willfully interfered with and converted Microsoft's personal property, without lawful justification, as a result of which Microsoft has been deprived of possession and use of its property.

137. As a result of Defendants' actions, Microsoft has been damaged in an amount to be proven at trial.

**TENTH CLAIM FOR RELIEF**

**(Breach of Contract)**

138. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 137 above.

139. Defendants entered into a binding contract with Microsoft by creating one or more Windows Hotmail e-mail accounts and agreeing to abide by Microsoft's Service



1 Agreement, Terms of Use, and Anti-Spam Policy. Defendants entered into a binding contract  
 2 with Microsoft by signing up for Microsoft's JMRP and SNDS and agreeing to abide by the  
 3 terms of the Junk E-Mail Reporting Agreement. Microsoft fully performed all conditions and  
 4 promises in accordance with the terms and conditions of its Service Agreement, Terms of Use,  
 5 Anti-Spam Policy, and Junk E-Mail Reporting Agreement. Defendants breached Microsoft's  
 6 Service Agreement, Terms of Use, Anti-Spam Policy, and Junk E-mail Reporting Agreement by,  
 7 among other things:

- 8 a. using technologies, products, services, devices, and components to
- 9 automatically generate millions unauthorized Hotmail e-mail accounts;
- 10 b. using these unauthorized Hotmail e-mail accounts, *inter alia*, to conduct
- 11 an unlawful spam campaign by transmitting to unsolicited commercial e-
- 12 mail messages to Hotmail users;
- 13 c. using these unauthorized Hotmail e-mail accounts to sanitize Defendants'
- 14 own spam e-mail messages, thus artificially lowering the recipient-
- 15 reported complaint level for Defendants' bulk e-mail; and
- 16 d. using Microsoft's JMRP and SNDS Feedback to artificially lower the
- 17 recipient reported complaint level for Defendant's bulk e-mail to
- 18 circumvent Microsoft's Hotmail spam filters.

19 140. Defendants entered into a Stipulated Permanent Injunction that enjoined  
 20 Defendants from, among other things:

- 21 a. sending spam e-mail in violation of Washington's Commercial Electronic
- 22 Mail Act or the federal CAN-SPAM Act;
- 23 b. using Microsoft's Hotmail Services – including MSN Internet Access or
- 24 MSN Hotmail – in violation of or in a manner inconsistent with the MSN
- 25 Terms of Use;
- 26 c. obtaining, compiling, selling, trafficking in, or trading, or directing aiding,
- 27 or conspiring with others to obtain, compile, sell, traffic in, or trade e-mail
- 28 addresses for sending or delivery of any unsolicited bulk or unsolicited

commercial e-mail in violation of state or federal law;

d. opening, creating or accessing, or directing, aiding, facilitating or conspiring with others to open, create, or access any Microsoft's Communication Services accounts, including but not limited to Microsoft's Hotmail e-mail accounts inconsistent with MSN Terms of Use; and

e. selling, offering for sale or distributing, or directing, aiding or conspiring with others to sell, offer for sale or distribute any software that allows the user to send unsolicited bulk or unsolicited commercial e-mail to, among others, Microsoft's Hotmail users.

141. Defendants and Microsoft entered into a binding Settlement Agreement to settle Microsoft's claims asserted in the Lawsuit. The Settlement Agreement required Defendants to, among other things, abide by the provisions of the Permanent Injunction. Microsoft fully performed all conditions and promises required on its part to be performed in accordance with the terms and conditions of the Agreement, including executing a Stipulated Judgment and Stipulated Permanent Injunction. Defendants failed to abide by the provisions of the Permanent Injunction and breached the Settlement Agreement by, among other things:

a. knowingly sending, transmitting or advertising in, directing, aiding or conspiring with others to send, transmit, or advertise in, vast quantities of unsolicited commercial e-mail messages to Hotmail users in violation of Washington's Commercial Electronic Mail Act and the CAN-SPAM Act;

b. obtaining, compiling, selling, trafficking millions of Hotmail e-mail accounts to send vast quantities of spam e-mail messages to legitimate Microsoft Hotmail users and to subvert Microsoft's JMRP mitigation policies;

c. creating millions of Hotmail e-mail accounts to send vast quantities of spam e-mail messages to legitimate Microsoft Hotmail users and to subvert Microsoft's JMRP mitigation policies; and

- d. selling, offering for sale or distributing, or directing, aiding or conspiring with others to sell software that allows a user to send unsolicited commercial e-mail messages to Microsoft's Hotmail users.

142. As a result of Defendants' actions, Microsoft has been damaged in an amount to be proven at trial. As a result of Defendants' breaches, Defendants have been unjustly enriched by an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Microsoft respectfully requests that the Court enter judgment against Defendants, jointly and severally, as follows:

143. That the Court issue temporary and permanent injunctive relief against Defendants, and that Defendants, their officers, agents, representatives, servants, employees, attorneys, successors and assignees, and all others in active concert or participation with Defendants, be enjoined and restrained from:

- a. using Microsoft's Hotmail Services;
- b. using Microsoft's JMRP and SNDS;
- c. publishing any content on WL Spaces pages using existing Windows Live ID accounts;
- d. using Microsoft's computers and computer systems in connection with sending or monetizing commercial e-mail messages;
- e. making unauthorized use of Microsoft's computers and computer systems;
- f. continuing to violate Microsoft's Terms of Use;
- g. continuing to violate the federal CAN-SPAM Act, the Washington Commercial Electronic Mail Act, the Washington Consumer Protection Act; the Digital Millennium Copyright Act, and the Computer Fraud and Abuse Act;
- h. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a) through g) above.

144. That the Court award Microsoft:

- a. compensatory damages subject to proof at trial;
- b. Defendants' profits pursuant to Settlement Agreement;
- c. liquidated damages pursuant to the Settlement Agreement and Judgment;
- d. damages as measured by the amount Defendants' were unjustly enriched by their breach of Microsoft's Service Agreement, Terms of Use, Anti-Spam Policy, and the JMRP Agreement;
- e. statutory damages and special damages;
- f. punitive damages;
- g. attorneys' fee, costs and expenses pursuant to 15 U.S.C. § 7706(g)(4) and pursuant to the Settlement Agreement and Judgment; and
- h. for such other relief as the Court deems proper in an amount to be proven at trial.

**DEMAND FOR JURY TRIAL**

Plaintiff Microsoft hereby demands a trial by jury in this action.

Dated: June 10, 2010.

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